

During interview, the applicant's representative raised the question that their sequence alignment results submitted 7/23/07 show that Laux and Baniker fail to disclose the claimed sequences, and the sequence database date is a 2005 date. The examiner indicated she will investigate the sequence history and reasons for discrepancy.

Upon consulting specialists of the Scientific and Technical Information Center at the PTO and the EMBL Nucleotide Sequence Database, it was determined that the alignment data submitted by the applicant only takes into consideration a portion of the full sequence, while the sequence search conducted by the PTO (mailed to the applicant along with the Final rejection, dated 10/16/2007) was a search of the full-length sequence, the hit as cited on record is a different portion of the full-length sequence as compared to the portion in the Applicant's alignment. Although the cited references did not list the full sequence in the published figures, it was available to the public before the applicant's priority date. This is evidenced by Baer et al. (Nature 1984;310:207-211, IDS), who discloses the complete nucleotide sequence of the B95-8 strain of EB virus, and deposited the complete DNA sequence and feature table with the EMBL nucleotide sequence data library (see legend of figure 1). The sequence information was updated by the EMBL on 2005, which is the date listed in the PTO search report. Baer reference was listed in the PTO search report, and was cited by Laux et al.

Further, it is noted the alignment for SEQ ID No: 5 is in agreement with the PTO search report.

Accordingly, the claimed sequences were available to the public before the applicant's filing date, and all of the rejections of record stand.